MERIDIAN PLANNING

# REGULATING CANNABIS CULTIVATION AND PROCESSING IN HALTON HILLS - OPTIONS FOR CONSIDERATION

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## 1.0 PURPOSE OF REPORT

The purpose of this report is to: i) review and assess recent federal legislation on cannabis cultivation and processing and the impacts on land use planning; and ii) identify options for regulating this activity in the Town of Halton Hills.

This report will outline a number of factors that support cannabis cultivation and cannabis processing as distinct land uses that should be regulated accordingly in the Town's Zoning By-law. As such, this report will also identify a number of options on where and under what conditions cannabis cultivation and cannabis processing could be permitted.

## 2.0 THE FEDERAL CANNABIS ACT

On April 13, 2017, the Government of Canada introduced Bill C-45 (the Cannabis Act) in the House of Commons. Based in large part on the advice provided by the Task Force on Cannabis Legalization and Regulation, the Cannabis Act created the foundation for a comprehensive national framework to provide restricted access to regulated cannabis, and to control its production, distribution, sale, importation, exportation, and possession.

Following parliamentary review, the Cannabis Act received royal assent on June 21, 2018 and it will become law on October 17, 2018.

As set out in section 7 of the Cannabis Act, the purpose of the Act is to protect public health and public safety and in particular to:

- Protect the health of young persons by restricting their access to cannabis;
- Protect young persons and others from inducements to use cannabis;
- Provide for the legal production of cannabis to reduce illegal activities in relation to cannabis;
- Deter illegal activities in relation to cannabis through appropriate sanctions and enforcement measures;
- Reduce the burden on the criminal justice system in relation to cannabis;
- Provide access to a quality-controlled supply of cannabis; and
- Enhance public awareness of the health risks associated with cannabis use.

In order to achieve the above, the Cannabis Act:

- Creates a general control framework for cannabis by establishing a series of criminal prohibitions, while providing for exceptions or authorizations to permit persons to engage in otherwise prohibited activities;
- Provides for the oversight and licensing of a legal cannabis supply chain;
- Provides for licences and that will set parameters for the operation of a legal cannabis industry;
- Indicates that Federal and Provincial/territorial governments will share responsibility for the oversight and licensing of the cannabis supply chain and that the federal Minister of Health will be responsible for licensing, among other activities, the production of cannabis (cultivation and processing), while Provincial and territorial governments can authorize the distribution and retail sale of cannabis in their respective jurisdictions; and
- Establishes national standards to protect public health and safety through the creation of a number of legal requirements that are intended to protect against the public health and public safety risks associated with cannabis.

It should be noted that by virtue of the enactment of the Cannabis Act, the Access to Cannabis for Medical Purposes Regulations (ACMPR) will be repealed when the Cannabis Act becomes law on October 17, 2018.

All producers with a licence (commercial and personal use) under the ACMPR will be allowed to continue operating until their existing licences expire, at which time they will have to apply for a licence under the new federal Regulation.

## 3.0 FEDERAL CANNABIS REGULATION

The Federal Cannabis Regulation SOR-2018-144 ('the Regulation') was published in the Canada Gazette, Part II, on July 11 2018. The Regulation is actually dated June 27, 2018 and it will also come into effect on October 17, 2018. This Regulation is one of a series of regulations that are intended to implement the Cannabis Act.

### 3.1 CLASSES OF LICENCES

The Regulation establishes a series of classes of licences that authorize activities that are related to cannabis and these are as follows:

- A licence for cultivation;
- A licence for processing;
- A licence for analytical testing;
- A licence for sale (medical purposes);
- A licence for research; and,
- A cannabis drug licence.

A series of subclasses of a licence for cultivation have also been established and they are:

- A licence for micro-cultivation;
- A licence for standard cultivation; and,
- A licence for a nursery.

In addition, the following subclasses have been established as a licence for processing:

- A licence for micro-processing; and
- A licence for standard processing

These classes of licences are new and have an impact on the regulation of various components of any cannabis-related land use in the Town of Halton Hills. Additionally, multiple licences can be held by one person or company, creating the potential for cultivation, processing and other licenced activities to occur on the same site.

### 3.2 LICENCE PERMISSIONS

#### *3.2.1 Licence for Cultivation*

Cultivation can occur indoors or outdoors and the plants can be rooted in the native soils. If grown indoors, it would be typically grown in a greenhouse type building as shown below:

If grown outside, it would have the appearance of a typical cash crop as shown in the photo below:

The holder of a licence for **micro-cultivation** and **standard cultivation** is permitted to:

- Possess cannabis;
- Obtain dried cannabis, fresh cannabis, cannabis plants or cannabis plant seeds by cultivating, propagating and harvesting cannabis;
- For the purpose of testing, to obtain cannabis by altering its chemical or

physical properties by any means; and,

- Sell cannabis.

The holder of a licence for micro-cultivation or standard cultivation can sell cannabis to:

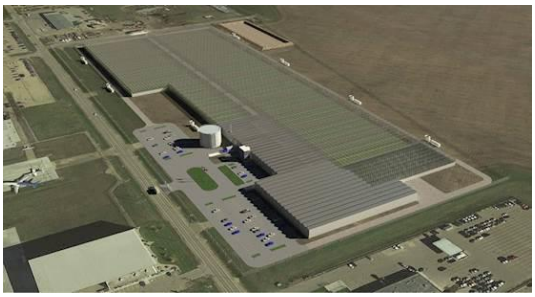
- The holder of other licences established by the Regulation; and
- Certain persons that have been granted an exemption under the Cannabis Act (for medical reasons for example).

However, it does not appear as if the holder of a licence for micro-cultivation or standard cultivation is authorized to sell cannabis to the general public from the facility. This means that general retail sales would not be permitted.

The difference between a licence for micro-cultivation and standard cultivation is that the surface area for a licence for micro-cultivation cannot exceed 200 square metres in which all cannabis plants, including all the parts of the plants, must be contained.

The holder of a licence for a **nursery** (which is a subclass of a licence for cultivation) is allowed to carry on the activities of a holder of a licence for micro-cultivation or standard cultivation, except they are not able to obtain dried cannabis or fresh cannabis. In other words, only cannabis plants or cannabis plant seeds can be used for growing cannabis in a nursery. If the holder of a licence for a nursery cultivates cannabis for the purpose of obtaining cannabis plant seeds, the total surface area that can be devoted to this purpose cannot exceed 50 square metres.

Some of the facilities that have been constructed in the past year are very large, such as the Aurora Sky facility in Edmonton that has an approximate floor area of about 75,000 square metres (which is about the same size as the Toronto Premium Outlets in Halton Hills). The Aurora Sky facility is shown below:



Based on the example noted above, such a facility shares many of the characteristics of an industrial or warehouse building. However, most of the building has the appearance of a greenhouse, as shown in the photos below:

It is noted that the size of the Aurora Sky facility shown above is at the high end and that many of the other known facilities are considerably smaller.

### *3.2.2 Licence for Processing*

It is anticipated that applicants will apply for both a licence for cultivation and a licence for processing so that both activities can take place in the same

building and/or on the same property. However, further research will be required on licences that have been granted to date and which will be granted in the next few months to determine if this is actually the case in most circumstances.

Two types of licences have been established for **processing** – standard processing and micro processing. In both circumstances, the licence does not allow the cultivation, propagation or harvesting of cannabis. In other words, a processing licence only allows the licence holder to produce cannabis for sale.

The difference between a standard processing licence and a micro-processing licence is that no more than 600 kilograms of dried cannabis can be sold or distributed in a calendar year with a micro-processing licence.

#### *3.2.3 Licence for Analytical Testing*

The holder of a licence for **analytical testing** is authorized to possess cannabis and to obtain cannabis by altering its chemical or physical properties by any means.

The sale or distribution of any product from the holder of a licence for analytical testing is not permitted and there are rules on how long cannabis can be kept on site before it needs to be destroyed.

The holder of this licence may also have other licences.

#### *3.2.4 Licence for Sale of Cannabis for Medical Purposes*

The holder of a licence for **sale of cannabis for medical purposes** is permitted to possess cannabis products and to sell cannabis products. These products can be sold to other types of licence holders, a person to whom an exemption has been granted under the Cannabis Act or to a hospital employee.

The holder of this licence may also have other licences.

#### *3.2.5 Licence for Research*

The holder of a **licence for research** is permitted to possess cannabis, produce cannabis or transport, send or deliver cannabis between the sites that are set out by the licence. Additionally, the licence holder can sell cannabis plants and cannabis plant seeds to other licence holders, the Minister or a person to whom an exemption has been granted under the Cannabis Act.

As per above, the holder of this licence may also have other licences.

#### *3.2.6 Cannabis Drug Licence*

The holder of a **cannabis drug licence** is permitted to possess cannabis and produce or sell a drug containing cannabis. These products can be sold to other types of licence holders, a person to whom an exemption has been granted under the Cannabis Act or to a pharmacist, a practitioner or a hospital employee.

### 3.3 RETAIL SALES

The Regulation does not deal with the retail sale of cannabis to the general public. This is because the responsibility for establishing a distribution system and retail sale network is the responsibility of the provinces and territories.

Prior to the last Ontario Provincial election, the Provincial government announced plans to regulate the sale of cannabis using the LCBO for sale and distribution.

Mirroring the LCBO model, 'Ontario Cannabis Stores' would have been stand-alone retail stores, with locations being selected by the Province. The LCBO had plans to open 150 OCS stores by 2020 and 29 municipalities were selected for stores, however the Town of Halton Hills was not one of them.

However, on August 13, 2018 the Ontario government announced a new plan for the retail sale of recreational cannabis. In this regard, and as of October 17, 2018, recreational cannabis will be available

through online sales using the Ontario Cannabis Store as the distributor.

The Ontario government has also committed to a privatized sales model by April 1, 2019, which would allow the retail sale of cannabis. Until then, cannabis cannot be sold or distributed in public establishments. The Association of Municipalities of Ontario (AMO) has been supportive of private retail sales for cannabis as a job creator in communities across the Province to aid local economic development.

On August 13, 2018, the Province announced that the government would consult with municipalities, police, industry and other stakeholders to propose new legislation in the Fall of 2018 to allow licensed, private retail cannabis sales by April 1, 2019. New municipal councils will also be given the ability for a "one time" opt out of licensed sales in their communities after the municipal election. The opt out gives municipalities more time to consider retail sale in the communities, after which they can opt in to allow the use. Once a municipality has opted in they cannot opt out in the future.

Given the above, the location of the future retail stores is unknown at this time, along with any possible Provincial requirements on their siting. Given the nature of most, if not all zoning by-laws in Ontario, the retail sale of cannabis would be considered a retail store and permitted wherever retail stores are permitted.

However, the Town may choose to evaluate where this type of retail store should be permitted and under what conditions at a later date, once Provincial requirements are clearer. In this regard, there may be a need to specifically determine whether regulations on where cannabis retail sales establishments are located are required, potentially taking into account the location of the uses in relation to public spaces, retail shopping areas and other land uses.

### 3.4 ROLE OF MUNICIPALITY IN LICENSING PROCESS

It does not appear as if there is any requirement for local municipal support before a Federal licence is issued. In this regard, the Regulation only appears to require an applicant to provide written notice to municipalities and others as per Section 7(1) of the Regulation reproduced below:

***Before submitting an application to the Minister for a licence for cultivation, a licence for processing or a licence for sale that authorizes the possession of cannabis, the person that intends to submit the application must provide a written notice to the following authorities in the area in which the site referred to in the application is located:***

***a) The local government;***

***b) The local fire authority; and***

***c) The local police force or the Royal Canadian Mounted Police detachment that is responsible for providing policing services to that area.***

In addition to the above, licence holders are also required to notify the local government when a new licence has been issued as per Section 35(1) of the Regulation as set out below:

***A holder of a licence for cultivation, a licence for processing or a licence for sale that authorizes the possession of cannabis must, within 30 days after the issuance, amendment, suspension, reinstatement or revocation of the licence, provide a written notice to the local authorities referred to in paragraphs 7(1)(a) to (c) in the area in which the site set out in the licence is located and provide a copy of the notice to the Minister.***

In the Spring of 2018, the Federation of Canadian Municipalities (FCM) released the 'Municipal Guide to Cannabis Regulation' ('FCM Guide'). It is noted that the FCM Guide was released prior to the Regulation and there was, and continues to be, much discussion about implementation and interpretation. In this regard, the Guide indicates the following:

*If a business obtains a federal licence under the Cannabis Act, it will not mean that the company will not be subject to provincial/territorial or local government regulations dealing with land use management. Locally, this constitutional arrangement can provide municipalities with the authority to prohibit particular land uses. We recommend that municipalities consult their individual provincial/territorial enabling land use laws for specific direction. But generally, there is no obligation for municipalities to permit cannabis cultivation in specific areas.*

Notwithstanding the above need to consult 'provincial land use laws', the FCM Guide indicates the following:

*Local governments are entitled to interpret enabling legislation broadly enough to address emerging issues and respond effectively to community objectives. However, they cannot extend its scope beyond what the wording of the legislation can reasonably bear. Some enabling legislation across Canada may allow local governments to deal with particular uses on a "conditional use" or "direct control" basis, which might be particularly appropriate in the case of new land use activities (such as those associated with cannabis) whose impacts are not well-understood at the outset.*

It should be noted that 'conditional use' and 'direct control' are not components of Ontario's land use planning regime. In any event, the FCM Guide concludes the following:

*None of the land use activities that are expected to result from the legalization of cannabis are likely to diverge from the existing enabling legislation and interpretations noted above. The land use activities contemplated relative to the Cannabis Act are similar to activities associated with other consumable commodities such as food, beverages and tobacco.*

Based on the information provided, and in the absence of other countervailing views on the matter, it is my opinion that a local municipality can regulate cannabis-related land uses that are subject to Federal licences much like any other land use.

This means that while there is no municipal role in the licensing process, there would still be a requirement for licence holders to comply with local zoning controls.

### 3.5 IMPACTS OF FEDERAL LEGISLATION AND REGULATION ON THE ESTABLISHMENT OF LAND USE CONTROLS

The Federal regulatory regime does not provide the basis for creating specific land use regulations. For example, there are no setback requirements specified and there are no specific requirements for any type of licence holder to carry out authorized activities away from other land uses.

The only specific part of the Regulation that deals with adjacent land uses relates to the production of cannabis for personal medical purposes only.

In this regard, it is indicated that any outdoor cultivation (presumably in an individual's backyard) cannot be adjacent to a school, public playground, day-care facility or other public place frequented mainly by individuals less than 18 years of age. In this case, 'adjacent' means, according to Section 306, if the parcel has at least 1 point in common with the boundary of the other parcel of land with these uses.

It is not clear how this will ever be enforced or whether it will be possible to regulate the type of plants grown in a person's backyard through a zoning by-law. It is also noted that the Federal government also proposes to permit anyone to grow up to four plants on their property for personal use. This will make it even more difficult to regulate since everyone will have this as-of-right permission.

Notwithstanding the above, local municipalities do have the ability to regulate larger licenced uses and facilities, should they choose to do so. However, any regulation would need to be based on empirical evidence particularly if a minimum setback was required. Options in

this regard are provided in Section 4.0 of this report.

There are however, a few requirements in the Regulation dealing with security that could be considered through a planning approval process.

More specifically, those with cultivation, processing or sale licences are required to design their sites to prevent unauthorized access. This includes physical barriers around the perimeter, an intrusion detection system, and 24-hour visual recording.

This means fencing or another suitable barrier will be required and the location and design of the fencing may need to be assessed through an approval process to lessen the impact of these barriers on the public realm and adjacent land uses. This also means that gatehouses that control the entry and exit of people accessing a property will be a key element of the use and the location of the gatehouse may also need to be reviewed from a design perspective as well. It should be noted that the use of visual recording devices is also required along with 24-hour monitoring.

Given the above, the prospect exists for the establishment of fenced in compounds that may not be compatible with adjacent land uses, such as a business park with generous landscaping around the perimeter. The prospect also exists for fenced in compounds in agricultural and rural areas as well, and this may also not be compatible with the open space character of these areas.

The above rules on security generally apply to other licence holders as well (micro-cultivation, micro-processing or a nursery).

It should be noted that there are also a number of complex exemptions to the security requirements in the Regulation, which are designed primarily to recognize existing licences or permissions relating to cannabis for medical purposes.

The Regulation further states that cannabis must be processed, packaged, labelled, stored, sampled and tested in a building. This requirement could be included in a zoning by-law; however, the licence would require this in any event.

The Regulation also requires that all buildings be equipped with a system that filters air to prevent the escape of odours. This could also be codified in a zoning by-law; however, this would again be a requirement of the licence.

The Regulation does expressly prohibit the holder of any licence from conducting any activity authorized by the licence in a 'dwelling-house'. This could also be expressly prohibited in the Town's zoning by-law.

Notwithstanding the above, the growing of up to 4 plants in a dwelling for personal use would still be permitted. As a result, a distinction would need to be made between the growing of plants pursuant to a licence and the growing of plants for personal use, if the above prohibition was contemplated.

## 4.0 REGULATORY CONSIDERATIONS FOR HALTON HILLS

### 4.1 INTRODUCTION

Over the last 5 years, a number of municipalities in Ontario have passed zoning by-laws that were designed primarily to control the location of medical marijuana production facilities. A comprehensive overview of a number of the more recent municipal initiatives is attached to this report as **Appendix A**.

In general, many of the municipalities surveyed amended their zoning by-laws to specifically permit medical marijuana production in certain industrial zones and in some cases, setbacks were established from certain sensitive land uses.

While these other municipal examples are instructive, none of them take into account the recent Federal Regulation discussed in

Section 3.0 of this report and many if not all of these other municipal by-laws will need to be amended.

Given the distinct nature of the land use and its potential impacts, it is my opinion that the Town of Halton Hills should make a number of changes to its zoning by-law to effectively regulate this land use. The next section includes a discussion on potential considerations.

## 4.2 ODOUR CONCERNS

One impact often considered is the odour from the production and processing of cannabis. A number of municipalities have passed by-laws that established setbacks ranging between 150 metres to 500 metres for these facilities from certain types of uses.

### *4.2.1 Public Health Ontario*

In April 2018, Public Health Ontario released an evidence brief on odours from cannabis production. It concluded the following:

- No studies on health effects associated with exposure to cannabis odours were identified in the scientific or grey literature.
- Odours can result in annoyance and complaints from nearby residents. Current practices recommend the use of appropriate ventilation and filtration systems at cannabis production/cultivation facilities to mitigate the release of substances that may result in odours.
- A system to report and track odours could help inform on timing and extent of the occurrence of odour to assist local authorities to remedy potential problems.

The following was also stated in the Public Health Ontario document:

***The processing of cannabis and production of cannabis products can also result in odour emissions. Activities such as cannabis oil extraction/concentration can involve the use of chemical solvents such as butane or distillation using alcohol which can also contribute to the overall odour emitted from a production facility. Disposal of cannabis waste products is not expected to contribute to odour as proper disposal involves rendering the waste unusable by grinding and combining with other waste products (food, yard, paper, or plastic wastes, or soil) which will mask or dilute odour producing compounds. This waste is then disposed of according to local ordinances, which can include landfills or municipal waste incinerators which themselves are operated under licences that specify engineering controls for odour.***

The Public Health Ontario document recognized that odour emission controls would be a licensing requirement. On this basis, the following recommendation was made:

***The upcoming legalization of cannabis in Canada is expected to result in an increase in cannabis production or cultivation in both large and small-scale commercial facilities, and private residences. There is a potential that operation of these facilities will result in the release of odour and odorous compounds into the surrounding environment. However, environmental odours are regularly encountered from agricultural and industrial operations and odour control technologies are both readily available and widely used in these industries.***

***Although regulations and guidelines are still being developed for the province of Ontario, other jurisdictions have already legalized cannabis production and developed best practices and procedures to address odour issues. In general, cannabis production facilities can implement and maintain appropriate ventilation and filtration systems to satisfy applicable local odour nuisance standards. A formal system for residents to document and report nuisance odours can facilitate the enforcement of these standards or municipal bylaws. As part of the permitting process, odour control plans can be reviewed to determine whether emissions are adequately treated such that cannabis odours are not perceptible outside the exterior of the building.***

On the basis of the above, it would appear as if the establishment of odour controls

would be a requirement of any Federal licence.

From a local perspective, the Town through a re-zoning or site plan approval process could require an odour management plan to demonstrate that odours will not be noticeable in sensitive areas. However, if odour were a concern, it would be preferable to require a re-zoning to review any odour concerns rather than relying upon the site plan process alone where the use is already established.

It is noted that many other types of industries also emit odours (particularly food processing) and there are very few examples of zoning regulations that require setbacks from sensitive land uses. However, cannabis does have a unique and recognizable smell and it could be argued that this is enough to distinguish this type of land use from others.

Notwithstanding the above, there have been a number of anecdotal reports of the impacts of the smell emanating from cannabis greenhouses (such as the Redecan facility in the Town of Pelham in June 2018). In this regard, it has been reported that residents have detected odours from the greenhouse from 1 kilometre away. More research will be required on this issue. In terms of the nature of the smell itself, a review of a number of news articles indicates that the odour has a skunk-like smell.

It is not clear at this point if the requirements set out in the Federal Regulation and through the granting of individual licences will satisfactorily control odours. On this basis, there may be a need through an appropriate planning approval process to consider this on a case-by-case basis.

### *4.2.2 Provincial Policies to Consider*

Section 1.2.6.1 of the Provincial Policy Statement (PPS) indicates the following:

***Major facilities and sensitive land uses should be planned to ensure they are appropriately designed, buffered and/or separated from each other to prevent or mitigate adverse effects from odour, noise and other contaminants, minimize risk to public health and safety, and to ensure the long-term viability of major facilities.***

The three definitions in Section 1.2.6.1 are below:

***Major facilities: means facilities which may require separation from sensitive land uses, including but not limited to airports, transportation infrastructure and corridors, rail facilities, marine facilities, sewage treatment facilities, waste management systems, oil and gas pipelines, industries, energy generation facilities and transmission systems, and resource extraction activities.***

***Sensitive land uses: means buildings, amenity areas, or outdoor spaces where routine or normal activities occurring at reasonably expected times would experience one or more adverse effects from contaminant discharges generated by a nearby major facility. Sensitive land uses may be a part of the natural or built environment. Examples may include, but are not limited to: residences, day care centres, and educational and health facilities.***

***Adverse effects: as defined in the Environmental Protection Act, means one or more of:***

***a) Impairment of the quality of the natural environment for any use that can be made of it;***

***b) Injury or damage to property or plant or animal life;***

***c) Harm or material discomfort to any person;***

***d) An adverse effect on the health of any person;***

***e) Impairment of the safety of any person;***

***f) Rendering any property or plant or animal life unfit for human use;***

***g) Loss of enjoyment of normal use of property; and***

***h) Interference with normal conduct of business.***

Based on the definitions above, an industrial use would be considered a 'major

facility'; with the relevance being that indoor cultivation and processing of cannabis is expected to occur in 'industrial' type buildings.

The range of uses that would be considered sensitive as per the definition of 'sensitive use' is extensive since any building, amenity area or outdoor space is sensitive if routine or normal activities occurring at reasonably expected times would experience adverse effects.

The focus of Section 1.2.6.1 is on the adverse effects that may be experienced by a sensitive land use. Based on the definition of 'sensitive' in the PPS, any non-industrial use where people reside or gather, such as residential uses, schools and places or worship and other similar uses would be sensitive uses.

The Ministry of Environment (MOE) did come out with guidelines ('the D Series Guidelines') in the early 1990's to assist decision makers when dealing with sensitive uses. These guidelines were designed to inform the preparation of Official Plan policy and the making of Planning Act decisions in cases where a proposed use is potentially incompatible with an existing use.

Guideline D-6 (and the supporting guidelines contained within Guideline D-1) is the one guideline that specifically applies in this circumstance since where the intent is to prevent or limit the negative interaction of sensitive and industrial land uses.

Specifically, the Guideline is intended to apply when a change of land use is proposed (the range of situations are set out in Section 2.0 (Application) of the Guideline). In Halton Hills this Guideline could apply to cannabis cultivation (indoor) and processing facilities and could provide the basis for the establishment of setbacks on a case-by-case basis between cannabis cultivation (indoor) and processing and a sensitive land use.

However, Section 2.3.2 (under Guideline D-1) states the Guidelines do not apply if the land use is in compliance with the existing Official Plan and Zoning By-law.

This is an important factor to consider for the Town of Halton Hills, since permitting indoor cultivation and processing as-of-right in the zoning by-law would make it much more difficult to apply the Guideline since the principle of the use has already been established.

Lastly, Section 2.4 of Guideline D-1 indicates what adverse effects are in the context of this Guideline. Cannabis cultivation (indoor) and processing would most likely be associated with the adverse effect of 'odours and other air emissions'.

Section 3.1 of Guideline D-1 establishes the preferred approach to dealing with adverse effects and indicates that various buffers may be used to prevent or minimize adverse effects. However, the following is clearly indicated:

***Distance is often the only effective buffer, however, and therefore adequate separation distance, based on a facility's influence area, is the preferred method of mitigating adverse effects.***

In my opinion, this means that the only effective way of 'preventing' adverse effects in accordance with Section 1.2.6.1 of the PPS is separation.

The following is then indicated in Section 3.2 of Guideline D-1:

***The separation distance should be sufficient to permit the functioning of the two incompatible land uses without an adverse effect occurring.***

Again, this supports the principle that separation is the only effective way to prevent adverse effects in accordance with Section 1.2.6.1 of the PPS.

Section 1.1 of Guideline D-6 categorizes industrial facilities into three classes according to the objectionable nature of their emissions, their physical size/scale,

production volumes and/or the intensity and scheduling of operations.

The Guideline also establishes potential influence areas in Section 4.1. The influence area for a Class 1 facility is 70 metres, for a Class 2 facility it is 300 metres and for a Class 3 facility it is 1,000 metres. Section 2.0 of Guideline D-6 then defines what a Class 1, Class 2, and Class 3 facility is.

In order to determine what the classification of the use is (i.e. cannabis cultivation (indoor) and processing) and what the adverse effects may be, experts are typically retained, studies are completed and a reasonable determination is made on the severity of the impact, how it is measured and how it can or cannot be mitigated. While there may be some subjectivity in the analysis, it is generally limited based on the existence of policies, regulations and guidelines to deal with the issue.

In the case of cannabis cultivation (indoor) and processing, the main issue is odour, which may be difficult to measure in a rigorous and scientific manner. This is because the odours noticed on any given property will increase and decrease based on time of day, the season, wind-speed and the location of the source of the odour. On this basis, a case-by-case analysis may be preferable to deal with these subjective elements.

### 4.3 SOCIAL CONSIDERATIONS

There has long been a social stigma attached to the cultivation and consumption of illegal drugs.

With the legalization of cannabis, it will be made legally available in the same manner as alcohol. As a result, there would be no basis for an outright prohibition on the location of cannabis cultivation, production and distribution because the uses are now legally permitted across Canada.

However, there may be other economic development or social reasons for not wanting certain types of uses in a community, however, the basis for prohibiting these uses and/or setting them back from other uses would have to be defensible. In addition, similar uses with the same impacts would also have to be dealt with in the same manner for consistency purposes.

Notwithstanding the above, it may be desirable to consider establishing unique rules for the siting of cannabis retail stores in the future. Given the Province's plan to privatize retail sales, the Town may wish to consider regulations that control clustering, restrict the use in areas with sensitive land uses, and force stores to locate in standalone buildings.

## 5.0 PERMITTING CANNABIS RELATED USES IN HALTON HILLS

### 5.1 NEED FOR DEFINITIONS

It is my opinion that it would be in the public interest at a minimum for the Town to define these new and emerging land uses in its zoning by-law. This will allow the Town to make decisions on where these uses will be permitted and under what conditions (where they would be permitted is discussed in later sections).

The defined terms should mirror the terminology of the Federal Regulation. In this regard, it is recommended that the following terms be defined in the Town's Zoning Bylaw:

- Cannabis cultivation – indoor;
- Cannabis cultivation – outdoor;
- Cannabis processing;
- Cannabis analytical testing;
- Cannabis research facility;
- Cannabis medical sales establishment; and
- Cannabis drug licence establishment.

The definitions for the above terms would be based on the Federal regulations. It is

my opinion that there is no need to establish definitions for the various subclasses (micro-cultivation/standard cultivation, nursery, micro-processing, standard processing).

Consideration could also be given to including a definition of air treatment control (ATC), if there is a desire to require that this be an element of certain licenced facilities. Since Municipal By-law Officers cannot enforce federal licencing requirements, establishing an ATC definition and requirement locally would ensure the Town can enforce compliance.

## 5.2 AGRICULTURAL AND RURAL AREAS

### *5.2.1 Cannabis Cultivation*

The Provincial Policy Statement 2014 (PPS 2014) classifies rural areas into three categories – Settlement Area, Prime Agricultural Area and Rural Lands.

The PPS 2014 recognizes rural areas as important to the economic success of the Province and to quality of life. Section 1.1.4.1 encourages rural areas to be supported by building rural character and amenities, promoting redevelopment, accommodating a range of housing, encouraging the conservation of the housing stock, promoting diversification, providing opportunities for tourism, conserving biodiversity and providing opportunities for economic activities in prime agricultural areas. Section 1.1.4.1 i) specifically addresses prime agricultural areas in the rural area and states:

*Healthy, integrated and viable rural areas should be supported by:*

*i. Providing opportunities for economic activities in prime agricultural areas, in accordance with policy 2.3.*

Section 2.3.3 of the PPS 2014 establishes the permitted uses in prime agricultural areas. Section 2.3.3.1 states:

*In prime agricultural areas, permitted uses and activities are: agricultural uses, agriculture-related uses and on-farm diversified uses.*

*Proposed agriculture-related uses and on-farm diversified uses shall be compatible with, and shall not hinder, surrounding agricultural operations. Criteria for these uses may be based on guidelines developed by the Province or municipal approaches, as set out in municipal planning documents, which achieve the same objectives.*

The PPS 2014 provides definitions for agricultural use, agriculture-related use and on-farm diversified uses as follows:

*Agricultural Use: means the growing of crops, including nursery, biomass and horticultural crops; raising of livestock; raising of other animals for food, fur or fibre, including poultry and fish; aquaculture; apiaries; agro-forestry; maple syrup production; and associated on-farm buildings and structures, including, but not limited to livestock facilities, manure storages, value-retaining facilities and accommodation for full-time farm labour when the size and nature of the operation requires additional employment.*

*Agriculture-related uses: means those farm-related commercial and farm-related industrial uses that are directly related to farm operations in the area, support agriculture, benefit from being in close proximity to farm operations, and provide direct products and/or services to farm operations as a primary activity.*

*On-farm diversified uses: means uses that are secondary to the principal agricultural use of the property, and are limited in area. On-farm diversified uses include, but are not limited to, home occupations, home industries, agri-tourism uses, and uses that produce value-added agricultural products.*

The PPS 2014 does not make any distinctions between the types of crops that are grown, as long as whatever is produced is harvestable, which means that the cultivation of cannabis would be an agricultural use. All on-farm buildings and structures associated with the growing of a harvestable crop (such as a greenhouse) would also be a permitted use.

On the basis of the above, an argument could be made that cultivation is an

agricultural use, which could be permitted under the Town's Zoning By-law.

If there was a desire to be more specific on this point, the Town's zoning by-laws could specifically permit cannabis cultivation as a sub-set of an agricultural use. This could help provide clarity in the Zoning By-law on cultivation in rural areas.

### *5.2.2 Cannabis Processing and Other Types of Licenced Facilities - an Agricultural Related Use?*

Based on existing facilities in other municipalities, the amount of floor area devoted to processing would be significantly smaller than the amount of greenhouse space or outdoor area used for cultivation. In a few cases, the processing component only occupies 10% to 15% of the area.

As a result, the processing of cannabis (along with testing and research) could be considered an agriculture-related use.

For a use to be considered as agriculture-related, it must be a farm related commercial use and/or a farm related industrial use that satisfies all of the criteria below:

- Is directly related to farm operations in the area;
- Supports agriculture;
- Benefits from being in close proximity to farm operations; and
- Provides direct products and/or services to farm operations as a primary activity.

In 2016, the Ontario Ministry of Agriculture Food and Rural Affairs (OMAFRA) published the Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas (OMAFRA guidelines). The intent of the OMAFRA guidelines is described as follows:

***The Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas will help municipalities; decision-makers, farmers and others interpret the policies in the Provincial Policy Statement, 2014 (PPS) on the uses that are permitted in prime agricultural areas. It comprises the provincial guidelines referred to in Policy 2.3.3.1 of the PPS.***

Section 1.1 of the OMAFRA guidelines also states that:

***These guidelines are meant to complement, be consistent with and explain the intent of the PPS policies and definitions. Where specific parameters are proposed, they represent best practices rather than specific standards that must be met in every case.***

Section 2.2 of the OMAFRA guidelines indicates that agriculture-related uses may be located on farms or on separate agriculture-related commercial or industrial properties. Previously, the PPS 2005 restricted agriculture-related uses to the property it supports or serves.

With respect to farm-related commercial uses, Section 2.2.1.1 of the OMAFRA guidelines specify the following:

***Farm-related commercial uses may include uses such as retailing of agriculture-related products (e.g. farm supply co-ops, farmers' markets and retailers of value-added products like wine or cider made from produce grown in the area), livestock assembly yards and farm equipment repair shops if they meet all the criteria for the category of agriculture-related use.***

It is noted that the 'criteria' referenced above is from Table 1 of the OMAFRA guidelines and are similar to the four parts of the definition of agriculture-related use in the PPS 2014.

In addition to the above, the OMAFRA guidelines provide other examples of agriculture-related uses as well and they are:

- Apple storage and distribution centre serving apple farm operations in the area;
- Agricultural research centre;
- Farmers' market primarily selling products grown in the area;
- Winery using grapes grown in the area;

- Livestock assembly yard or stock yard serving farm operating in the area;
- Processing of produce grown in the area (e.g., cider-making, cherry pitting, canning, quick-freezing, packing);
- Abattoir processing and selling meat from animals raised in the area;
- Grain dryer farm operations in the area;
- Flour mill for grain grown in the area;
- Farm equipment repair shop;
- Auction for produce grown in the area; and,
- Farm input supplier (e.g., feed, seeds, fertilizer (serving farm operations in the area

Based on the examples above, cannabis processing could be considered an agriculture-related use subject to the other criteria being satisfied.

In this regard, the **first criterion** to consider is whether the farm-related commercial and/or farm-related industrial use is directly related to farm operations in the area.

Section 2.2.1.3 of the OMAFRA guidelines provide some guidance on what this means:

***Agriculture-related uses must be directly related to farms in the area, primarily providing products or services that are associated with, required by or that enhance agricultural operations in the area. Directly related to means that the use should reflect the type of agricultural production in the area.***

Again there are three parts to the above, which means that for a use to be an agriculture-related use in this context and to satisfy this criterion, it must be directly related to farms in the area and primarily provide products or services that are:

- Associated with agricultural operations in the area; or
- Required by agricultural operations in the area; or
- Enhance agricultural operations in the area.

It is then further indicated that the agriculture-related use should reflect the type of agricultural production in the area. The PPS 2014 and the OMAFRA guidelines use the words 'in the area'.

Given the expectation that cannabis cultivation and cannabis processing would occur on one property, it is not clear how 'in the area' would be interpreted in this case.

However, it is noted that a winery is provided as an example and it is possible in some circumstances for all of the grapes to be sourced from the same property. As a consequence, there is no express prohibition in the guidelines on the processing of cannabis on the same property as the cultivation of cannabis.

Notwithstanding the above, the OMAFRA guidelines do support agriculture-related uses on separate properties in any event.

The **second criterion** to consider is whether the farm related commercial use and/or a farm related industrial use supports agriculture. This criterion does not seem to have any qualification according to the OMAFRA guidelines and since the processing of cannabis would support the growing of cannabis, it could be argued that it supports agriculture.

The **third criterion** to consider is whether the farm related commercial use and/or a farm related industrial use benefits from being in close proximity to farm operations.

Section 2.2.1.6 of the OMAFRA Guidelines state the following:

***To meet this criterion, agriculture-related uses must benefit from or need to be located near the farm operations they serve.***

Processing at the cultivation site is a more sustainable practice as going from crop to

finished product on the same site limits transportation needs and reduces waste. This practice would also be economically beneficial for the cultivator, who would then sell directly to the dispenser.

The **fourth criterion** to consider is whether the farm related commercial use and/or a farm related industrial use provides direct products and/or services to farm operations as a primary activity.

Section 2.2.1.5 of the OMAFRA guidelines indicate the following:

***Direct products and/or services refers to uses that serve an agricultural need or create an opportunity for agriculture at any stage of the supply chain (e.g., value-added food and beverage processing and distribution or retail of agricultural commodities grown in the area).***

Cannabis processing would add value to the product grown on the same site and would therefore satisfy this criterion.

### *5.2.3 Cannabis Processing and other Types of Licenced Facilities - an On-Farm Diversified Use?*

The PPS (2014) defines on-farm diversified uses as follows:

***Means uses that are secondary to the principal agricultural use of the property, and are limited in area. On-farm diversified uses include, but are not limited to, home occupations, home industries, agri-tourism uses, and uses that produce value-added agricultural products.***

In order for a use to be considered an on-farm diversified use, it would have to be both secondary to the principal use of the property and be limited in area.

Section 2.3.1 of the OMAFRA Guidelines indicate that on-farm diversified uses must be located on a farm property that is actively used.

In the case of a cannabis processing facility that is located on a property where the cannabis is cultivated, such a use would be on the same property and it would clearly be secondary, because of its limited scale in relation to the cultivated area.

This would also apply to the other types of licences, particularly those that deal with testing and research, again provided cannabis was being cultivated on the same property.

### *5.2.4 Implications*

As per the above, it can be argued that cannabis cultivation is an agricultural use.

The processing of cannabis and any related testing and research would most likely be considered an agriculture-related use and/or an on-farm diversified use, as long as cannabis was being cultivated on the same property.

However, the establishment of a processing facility or other type of licenced facility may also be considered an agriculture-related use on a separate parcel of land as well, as long as the cannabis cultivation was occurring in the area.

## 5.3 URBAN AREAS

Consideration has also been given to allowing cultivation and production in areas of the Town where industrial activities are permitted. As noted previously, a number of other municipalities have specifically chosen to direct cannabis facilities to industrial areas **(See Appendix A).** Given that cultivation and processing can be done in wholly enclosed facilities, consideration could be given to permitting these activities in the areas outlined below, subject to consultation with stakeholders and the broader community.

At the present time, urban employment areas in the Town are subject to two separate Comprehensive Zoning By-laws. For the location of the Premier Gateway and Town's urban Employment Areas, please see **Appendix B.**

### *5.3.1 Halton Hills Premier Gateway Business Park*

Bylaw 00-138 applies to the Halton Hills Premier Gateway Business Park, which is

located at the intersection of Highway 401 and 407 and extends westwards along the north side of Highway 401 to the Town of Milton.

The two following primary zones are established in this Bylaw:

- 401 Corridor Prestige Industrial (M7) Zone; and
- 401 Corridor Gateway (G) Zone.

The M7 Zone applies to the majority of the area subject to the by-law except for in the vicinity of the 401 interchange with James Snow Parkway, the 401 interchange and Trafalgar Road and an area of land north of Highway 407 on the west side of Winston Churchill Boulevard.

A wide range of uses is permitted in the M7 zone, including industrial uses, manufacturing uses and warehouse uses, all of which are required to be conducted wholly within an enclosed building. It is also noted that research uses are also permitted within the M7 zone.

One of the main differences between the M7 Zone and the G Zone is that industrial uses, manufacturing uses and warehouse uses are not permitted within the G Zone. On the basis of the above, it is not recommended that the cultivation and processing of cannabis be permitted in the G Zone.

With the above in mind, there are three options for the Town to consider for the M7 Zone as per below:

**Option 1** - Given that the M7 Zone permits industrial and warehouse uses, consideration could be given to permitting cannabis processing facilities, cannabis analytical testing facilities and cannabis research facilities in the M7 Zone.

With respect to cannabis cultivation, this use could be permitted in conjunction with one of the above uses, provided it was carried out inside the building only.

It is recognized that the Town wishes to promote the Premier Gateway Business Park as a high quality place to do business and the urban design guidelines in place support the development of an industrial park-like campus in the area. In this regard, an example of a recent development in the M7 Zone is below:

The development of a greenhouse type building may conflict with that vision because of its perceived 'temporary' nature.

With the above in mind, it is recommended that should the Town wish to permit the above uses in the M7 Zone, the following by-law regulations be considered:

- The facade of any building facing highway 401 and Steeles Avenue should be clad in brick or other suitable material that does not give the impression that the building is a greenhouse.
- The height of any greenhouse portion of a building should not extend higher than the front facades as per item a) above.

Another option for consideration would be to define a greenhouse in the Zoning By-law and prohibit it in the M7 Zone. This would force prospective cultivators/ producers to develop a facility more reflective of Council-adopted development policies for the Gateway's Phase 1B lands.

In addition to the above, cannabis cultivation would have to be added as a permitted use in the M7 Zone if this option were selected since agricultural uses are not specifically identified as a permitted use.

It is noted that Section 13.102.4 of the By-law 00-138 indicates that where a term or word is not defined, the definitions of Section 3 of Bylaw 57-91 shall apply. In this regard, there is a definition for agricultural use in Bylaw 57-91. Given this fact, the agricultural uses would not be an as-of-right permitted use currently in the M7 Zone.

**Option 2** – This option involves defining each use as has already been recommended and then to prohibit the uses in any zone within By-law 00-138. This means that a re-zoning would be required if such a use was proposed. This would allow for the consideration of the unique context of each site as part of the re-zoning process. In order to assist with the implementation of this option, Official Plan policies would be required, with these policies identifying the criteria to be considered.

**Option 3** – This option involves defining the various uses as per the above and permitting them in the M7 Zone subject to the removal of a holding provision.

In order for this option to be implemented, policies would need to be included within the Official Plan that identify the conditions under which the holding provision could be removed by Council should such an application be made. These criteria could deal with such matters as the design of the facades, the extent to which odours from the facility would be managed and the visibility of the use from surrounding properties.

Given the known concerns about the odour that emanates from cannabis cultivation (indoor) and processing, and the difficulty that exists in my opinion to establish a uniform setback, selecting Options 2 and 3 would be preferred.

### *5.3.2 Urban Employment Areas in Acton, Georgetown and Mansewood*

The remainder of the Town of Halton Hills is subject to Bylaw 2010-0050.

This by-law established the Employment 1 (EMP1) Zone that applies to established urban employment areas in both Acton and Georgetown and the Rural Employment (RU-EMP) Zone that applies to an area in Mansewood that is currently developed with dry industrial uses with urban services planned in the future.

With the above in mind, there are three options for the Town to consider as per below:

**Option 1** - Given that the EMP1 Zone permits uses requiring similar facilities on larger lots, consideration could be given to permitting cannabis processing facilities, cannabis analytical testing facilities and cannabis research facilities in the EMP1 Zone, since they share some, but not all, of the same characteristics of other permitted uses.

With respect to cannabis cultivation, this use could be permitted in conjunction with one of the above uses, provided it was carried out inside the building only.

For those properties that front or flank on Mountainview Road or Guelph Street in Georgetown and Regional Road 25 in Acton, the Town could decide to not permit these uses on these parcels so that the uses are directed to the interior of the employment areas.

**Option 2** – This option involves defining each use as has already been recommended and then to not permit the uses in the EMP1 Zone.

This means that re-zoning would be required if such a use was proposed. This would allow for the consideration of the unique context of each site as part of the re-zoning process. Given that portions of the EMP1 Zones in Acton and Georgetown are in close proximity to residential areas, different approaches for areas under EMP1 zoning could be considered. In order to assist with the implementation of this option, Official Plan policies would be required, with these policies identifying the criteria to be considered.

**Option 3** – This option involves defining the various uses as per the above and permitting them in the EMP1 Zone subject to the removal of a holding provision.

In order for this option to be implemented, policies would need to be included within the Official Plan that identify the conditions under which the holding provision could be removed by Council should such an application be made. These criteria could deal with such matters as the extent to which odours from the facility would be managed and the visibility of the use from surrounding properties.

This option may be particularly attractive in Georgetown and Acton because of the proximity of much of the EMP1-zoned lands to major roads and residential areas.

With respect to the RU-EMP Zone, the options identified for the M7 Zone could be considered, because both areas share a number of contextual similarities.

Given the known concerns about the odour that emanates from cannabis cultivation (indoor) and processing, and the difficulty that exists in my opinion to establish a uniform setback, selecting Options 2 and 3 would be preferred.

### *5.3.3 Including Setbacks in the By-law*

None of the options presented in the report include the establishment of setbacks.

It is recognized that a number of municipalities have included larger setbacks in their zoning by-laws between cannabis production/processing facilities and certain sensitive land uses such as residential and institutional properties.

It is not clear at this point what the scientific basis would be for establishing a setback given that there is a requirement for air filtration to be utilized to minimize odour effects. In this regard, further research will be required on the basis for the setback to avoid a challenge in the future. It should be noted a definition for Sensitive Land Use would be required in the future, should the Town opt to restrict any activity near them.

In addition, and as mentioned previously, the determination of when an odour becomes an adverse effect is very difficult to measure in a rigorous and scientific manner. This is because the odours noticed on any given property will increase and decrease based on time of day, the season, wind-speed and the location of the source of the odour. On this basis, a case-by-case analysis would therefore be preferable to deal with these subjective elements.

It is also not clear whether an Environmental Compliance Approval ('ECA') pursuant to the Environmental Protection Act would be required for such a use. If an ECA was required, such an ECA could have conditions attached which deal with outdoor odour and potentially air quality issues.

### *5.3.4 Status Quo Option*

Implementing this option is exactly as is described, meaning that no changes would be made to the Town's Zoning Bylaw.

Given the unique nature and high profile of this type of land use, this option is not recommended.

### *5.3.5 Other Considerations*

Given that the Federal Regulation indicates that the growing of marijuana is not permitted within a dwelling house, the Town could consider including a prohibition in the Zoning By-law that explicitly prohibits the growing of cannabis that has been authorized by licence within a dwelling unit.

In addition to the above and given the nature of the use, it is recommended that consideration be given to permitting cannabis processing within standalone buildings only. In other words, such a use should not be permitted in multi-use buildings where there may be land use compatibility concerns, depending on the nature of the other uses in the multi-use building.

Lastly, while the Federal Regulation appears to expressly prohibit the retail sale of cannabis and cannabis products from a cannabis cultivation use, cannabis processing facility and from the other uses already mentioned, it is recommended that consideration be given to also prohibiting the retail sale of cannabis and cannabis products from these uses as well. As mentioned previously, this report does not deal with the retail sale of cannabis and cannabis products in a retail environment given the uncertainties around the Provincial position on retail sales.

It is also recommended that the Town consider requiring site plan approval for these types of facilities, no matter their location, should one be proposed. This may necessitate changes to the Town's Site Plan Control By-law.

# APPENDICES

## APPENDIX A – EXAMPLES OF MUNICIPAL POLICY ON CANNABIS PRODUCTION

| Examples of Municipal Policy Regulating Cannabis/Marijuana Production Facilities | | | |
|---|---|---|---|
| **Municipality** | **Changes to Official Plan** | **Changes to Zoning By-law** | **Policies Under Appeal** |
| Burlington | None to date.<br><br>Draft of new Official Plan does not make mention cannabis/marijuana production. | Zoning By-law Amendment 2020.344 does the following:<br><br>i) Establishes a definition for 'Medical Marihuana Production Facility.<br><br>ii) Establishes that this use will be permitted in General Employment (GE1 and GE2) zones.<br><br>iii) Establishes 6 regulations for establishing a facility in a permitted area. | None to date. |
| Milton | None to date. | The Town brought defined and regulated a Medical Marijuana Production Facility as part of their Comprehensive Zoning By-law 016-2014 (Urban Only).<br><br>Table 8A establishes that this use will be permitted in the M2 General Industrial zone.<br><br>Section 8.3.2. Establishes 5 regulations for establishing a facility in a permitted area.<br>Note: definition was amended in 2017 (113-2017) to remove specific reference to federal regulations. | None to date. |
| Oakville | None to date.<br><br>Official Plan and Secondary Plans currently under review, no draft expected until after 2018 election. | Current Zoning By-laws; 2014-014 (Main) and 2009-189 (North Oakville) make no mention of marijuana or cannabis. | None to date. |
| Caledon | No mention of cannabis/marijuana to date.<br><br>OPA 237 – 'Agriculture Related Use'<br><br>Extensive changes to definitions, wording in Agriculture section but does not mention cannabis production. | Currently defined in the ZBL 2006-50. Regulated in General Provisions.<br><br>Section 4.20 establishes that one facility may be permitted in a lot zoned Prestige Industrial or Serviced Industrial.<br><br>This section also provides 8 regulations all facilities must adhere to. | Zoning By-laws 2014-088 and 089 which address bringing medical cannabis production into ZBL are currently under appeal and subject to an OMB hearing which is currently ongoing.<br>File: PL141233 |
| Hamilton | Rural Official Plan – Amendment 9 to this adds a definition for Medical Marihuana Growing and Harvesting Facility (MMGHF) and allows under designations | Urban zones – ZBL 14-163 adds MMGHF definition to Comprehensive ZBL and established parking regulations and regulations for use to be permitted in M2 General Business Park, M3 Prestige Business Park, M5 General Industrial, M6 Light Industrial zones. | Official Plan – currently some OPAs for urban OP under appeal, however nothing related to MMGHF. All Rural OPAs have |

| Examples of Municipal Policy Regulating Cannabis/Marijuana Production Facilities | | | |
|---|---|---|---|
| **Municipality** | **Changes to Official Plan** | **Changes to Zoning By-law** | **Policies Under Appeal** |
| | for Agriculture and Specialty Crop areas.<br><br>Urban Official Plan – OPA 23 to this defines MMGHF and allows under General Employment Industrial and Industrial Business Park. As part of OPA 31 MMGHF prohibited in Urban Farm areas. | Rural zones – ZBL 15-173 adds MMGHF as an established use under Agriculture definition and adds as permitted use with regulation under M12 Extractive Industrial zone. MMHGF also permitted in A1 A2 zones with reference to regulations for M12 zone. Section 271 allows for greater GFA of 21,500m$^2$ (2000m$^2$ everywhere else).<br><br>Use prohibited in Lower Stoney Creek. | passed.<br>Zoning – ZBL 14-163 bringing MMGHF into Industrial zones has passed.<br>ZBL 15-173 is still under appeal and has status 'Not Final and Binding'<br><br>As of March 2017 the City settled with appellant Pharm Med under OMB case PL150805 (case included 14 appellants to ZBL 15-173). Settlement included expanding GFA for the appellant to 21500m$^2$ for their lands on 5$^{th}$ Concession Rd East. (File: PL150805)<br><br>July 13$^{th}$, 2018 – Council votes down staff-supported OPA/ZBA to allow 13000m$^2$ greenhouse expansion at 1997 Jerseyville Rd. |
| Niagara-on-the-Lake | None to date.<br><br>Draft 3 of New OP includes 'Marihuana for Medical Purposes Production Facility' under Section 10.6.3 – the Site Plan Control will not apply to agricultural operations with exception of wineries and MMPPFs. | Comprehensive ZBL 4316-09<br>MMPPF defined in Section 5.<br><br>Includes parking regulation in Section 6.<br><br>Permitted in Glendale Zoning District under Section 11.12.1 in Light Industrial zones with regulations: no outdoor storage, 3m landscaped buffer strip with adjacent to sensitive land uses. | Note: Comprehensive ZBL Section 12 covering the rural/agricultural areas of NOTL has been repealed with a new By-law pending.<br><br>A draft is not available, however based on what's in draft of new OP |

| Examples of Municipal Policy Regulating Cannabis/Marijuana Production Facilities | | | |
|---|---|---|---|
| **Municipality** | **Changes to Official Plan** | **Changes to Zoning By-law** | **Policies Under Appeal** |
| | | | it can be assumed that MMPPFs will be permitted in agricultural zones subject to Site Plan Control. |
| Erin | None to date. | Nothing in current Zoning By-law.<br><br>Zoning By-law amendment would define and permit in Light and General Industrial zones (M1/M2) with 70m setback from Res., Inst., and OS zones.<br><br>ZBL would also permit in Agricultural (A) and Rural Industrial (M3) zones with 150m setbacks to same zones.<br><br>General provisions for the use would also require Site Plan Control, while no Minor Variance would be allowed; all changes go directly to ZBLA.<br><br>Wholly enclosed building required, outdoor storage prohibited and structure for security guards is allowed. | ZBLA was presented to public on March 20 so no decision yet.<br><br>No indication if OPA will be initiated for cannabis production.<br><br>Background Report for Town-initiated ZBL received at June 5 Council. |
| Brant | None to date. | Medical Marijuana Production Facility brought in as part of ZBL 61-16.<br>Defined in Section 3.<br><br>Permitted in Light Industrial (M2), Heavy Industrial (M3), Agricultural (A), and Agricultural Employment (AE) zones.<br><br>Regulated in General Provisions Section 4.23.<br>70m setback from Res., Inst., and OS zones when in M2 and M3.<br>150m setback when in A and AE.<br><br>Wholly enclosed building, no loading in front, fully fenced, not outdoor storage, security building allowed.<br><br>Subject to Site Plan Control.<br>No Minor Variances, all changes require ZBLA. | None to date. |
| Essex | None to date. | Zoning By-law Amendment 1411 brought 'Facilities used for the growing, storage, packaging or distribution of marijuana and or hemp' into comprehensive ZBL in 2015.<br><br>Permitted in Agricultural Districts subject to 300m setback from dwelling or Green District and 500m from all Residential Districts.<br><br>Permitted in General and Heavy Industrial Districts with same setbacks. | None to date. |

| Examples of Municipal Policy Regulating Cannabis/Marijuana Production Facilities | | | |
|---|---|---|---|
| **Municipality** | **Changes to Official Plan** | **Changes to Zoning By-law** | **Policies Under Appeal** |
| Lakeshore | None to date.<br><br>Draft of new OP does address Marihuana for Medical Purposes Production under Section 4 Building Healthy Communities.<br><br>Section 4.2.5 first states federal jurisdiction over medical marihuana. Policy in this section states OP should support site-specific zoning rules of ZBL while also stating as many as 7 studies may be required when re-zoning a property for the use.<br><br>Also states all application will be subject to Site Plan Control. | Marijuana for Medical Purposes Production Facility (MMPPF) defined in Section 4.<br><br>Additionally, definition section states both Agriculture and Industrial uses do not include MMPPF.<br><br>Under General Provisions Section 6.32.1 regulates MMPPF and states it shall only be permitted on a site-specific basis through a ZBLA subject to regulations:<br><br>Subject to SPA and must comply with provisions of zone in which is located.<br>150m setback from sensitive uses and Res., Inst., and Open Space zones.<br><br>MDS between 2 MMPPFs is 500m.<br><br>No outdoor storage or signage.<br><br>Minimum lot area is 4ha.<br><br>Minimum setback to all lot line is 30m.<br><br>Security building allowed while main building must be wholly enclosed with all activities taking place within. | Unclear when new OP will be adopted.<br>No appeals to ZBL to date. |
| Chatham-Kent | Using OPA 31, Section 2.7 'Marihuana for Medical Purpose Production' is laid out almost the same as the Lakeshore example above.<br><br>Will be permitted in Agricultural, Employment and Industrial areas subject to site-specific zoning and in support for the ZBL. | Similar to Lakeshore example, Marijuana for Medical Purposes Production Facility (MMPPF) defined in Section 4.<br><br>Additionally, definition section states both Agriculture and Industrial uses do not include MMPPF.<br><br>Under General Provisions MMPPFs only permitted through site-specific zoning with setbacks and parking requirements. | None to date. |
| Mulmur | None to date.<br>Existing OP consolidate 2012 | Medicinal Marijuana Growing defined and regulated under General Provisions.<br><br>Considered to be a Rural Commercial Use, and only allowed on lots greater than 8ha in size. Must also be 150m from any dwellings on adjacent lots and is subject to SPA. | First grow-op in the Township was taken to OMB after Council approved.<br><br>Citizens group challenged based on impacts on neighbouring land values, groundwater use, road safety and pollution. |

| Examples of Municipal Policy Regulating Cannabis/Marijuana Production Facilities | | | |
|---|---|---|---|
| **Municipality** | **Changes to Official Plan** | **Changes to Zoning By-law** | **Policies Under Appeal** |
| | | | OMB sided with grower and facility was approved in May of 2017. |
| Ottawa | None to date. | Medical Marihuana Production Facilities defined and regulated in ZBL.<br><br>MMPFs must be a permitted use in the zone, wholly enclosed building, no outdoor storage, not a dwelling, 150m from residential and institutional zones in both urban and rural areas.<br><br>Permitted in General Industrial, Heavy Industrial, Rural General Industrial and Rural Heavy Industrial zones. | None to date. |
| Havelock-Belmont-Methuen | None to date. | ZBA 2018-041 amends 'Agricultural Use' definition – shall not include any land, building or structure for the growing of Cannabis.<br><br>Also creates definition for Cannabis Production Facility, which does not specify medicinal. Also prohibits CPF in the definition of Commercial Greenhouse. Under GP section CPFs will only be permitted where:<br><br>- Municipal water/sewer available<br>- No other uses on lot<br>- Follows federal regulations<br>- Lands zoned Restrictive Industrial<br>1.<br><br>Also establishes regulations of:<br>- Min. lot are of 4000m$^2$<br>- Min. lot frontage of 45m<br>- 70m from Res., Inst., Com., Dev., or Open Space zones | None to date. |
| Norfolk County | None to date. | By-Law 25-Z-2018 – defines Cannabis and Cannabis Production and Processing.<br><br>Alters 'Farm' definition to not include CPP. Deletes definition for Medical Marihuana Production Facility.<br><br>Defines 'Air Treatment Control', which is used in CPP regulations. Replaces MMPF with CPP in several definitions.<br><br>Replaces General Provisions for MMPF with Provisions for CPP.<br><br>Replaces MMPF with CPP in SPC section.<br><br>Replaces MMPF with CPP in permitted uses for General Industrial, Light Industrial, Rural | None to date. |

| Examples of Municipal Policy Regulating Cannabis/Marijuana Production Facilities | | | |
|---|---|---|---|
| **Municipality** | **Changes to Official Plan** | **Changes to Zoning By-law** | **Policies Under Appeal** |
| | | Industrial, Agricultural zones.<br><br>Replaces MMPF with CPP in Special Provisions section. | |
| Guelph-Eramosa | None to date.<br><br>Township uses the Wellington County OP and does not have one of its own. | ZBL includes 'medical marijuana facilities' as part of 'Food Processing Plant' definition. | None to date. |
| The Blue Mountains | Section B2.12 - Permitted in Rural, Rural Employments Lands, and Urban Employment Lands designations, requiring a site-specific ZBA. | Definition only in draft 2018 ZBL. | None to date. |
| Township of King | None to date.<br><br>Draft of new OP does not mention CPF. | Zoning By-laws 2018-62, 63, 64 passed June 25th, 2018 bringing in definitions and regulations for Industrial Cannabis Processing Facility, Agricultural Cannabis Production Facility and Medical Cannabis Production Site.<br><br>Also created definitions for Sensitive Land Use and Air Treatment Control.<br><br>King will require SPA for all facilities and no Minor Variances will be allowed for Agricultural and Medical facilities.<br><br>General 150m setback from SLUs with 500m setback applied to outdoor growing. | None to date. |
| Markham | Nothing in draft of new OP. | Nothing in current ZBL which was consolidated in 2017, however new ZBL current being created. | The City of Markham completed a study in 2014 that concluded commercial production of medical marijuana is an industrial use. |
| Brantford | None to date. | Cannabis (Marijuana) Retail Store defined in ZBL as a building, structure or part thereof where any of the following occur:<br><br>The storage, dispensing or retail sale of cannabis, including but not<br><br>limited to cannabis-based edible products, for recreational purposes; and<br><br>Cannabis is consumed recreationally in any form.<br><br>Brantford has not attached regulations to | ZBL Amended (97-2017) to bring this definition in. |

| Examples of Municipal Policy Regulating Cannabis/Marijuana Production Facilities | | | |
|---|---|---|---|
| **Municipality** | **Changes to Official Plan** | **Changes to Zoning By-law** | **Policies Under Appeal** |
| | | this but rather has prohibited in multiple zones in the City. | |

## APPENDIX B – EMPLOYMENT AND PRESTIGE INDUSTRIAL ZONES